

# A Global Guide to Background Checks

## EMEA



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# EMEA BACKGROUND CHECKS TRAFFIC LIGHTS

SELECT A COUNTRY/JURISDICTION

|                                       | Belgium | Czech Republic | Denmark | Egypt  | Finland | France | Germany | Greece | Hungary | Iceland | Israel | Italy  | Netherlands | Poland | Russia | South Africa | Spain  | Turkey | United Kingdom |
|---------------------------------------|---------|----------------|---------|--------|---------|--------|---------|--------|---------|---------|--------|--------|-------------|--------|--------|--------------|--------|--------|----------------|
| Education and past employment records | Green   | Green          | Green   | Green  | Yellow  | Green  | Yellow  | Green  | Green   | Green   | Green  | Green  | Green       | Yellow | Green  | Green        | Yellow | Green  | Green          |
| Criminal records                      | Yellow  | Yellow         | Yellow  | Green  | Yellow  | Yellow | Yellow  | Yellow | Yellow  | Yellow  | Red    | Yellow | Yellow      | Yellow | Red    | Red          | Red    | Green  | Yellow         |
| Credit/financial checks               | Red     | Yellow         | Yellow  | Yellow | Yellow  | Red    | Yellow  | Yellow | Red     | Yellow  | Yellow | Red    | Yellow      | Red    | Red    | Yellow       | Red    | Yellow | Green          |
| Health checks/medical screening       | Yellow  | Yellow         | Yellow  | Green  | Yellow  | Yellow | Yellow  | Yellow | Yellow  | Yellow  | Yellow | Yellow | Yellow      | Red    | Yellow | Yellow       | Red    | Green  | Green          |
| Social media/internet search          | Yellow  | Green          | Green   | Yellow | Yellow  | Green  | Yellow  | Yellow | Yellow  | Green   | Yellow | Yellow | Yellow      | Yellow | Green  | Green        | Yellow | Yellow | Yellow         |
| Fingerprinting                        | Yellow  | Red            | Yellow  | Yellow | Red     | Red    | Red     | Yellow | Yellow  | Yellow  | Red    | Yellow | Red         | Red    | Yellow | Yellow       | Yellow | Yellow | Yellow         |
| Handwriting                           | Yellow  | Red            | Yellow  | Yellow | Red     | Yellow | Yellow  | Yellow | Red     | Yellow  | Yellow | Yellow | Red         | Red    | Yellow | Yellow       | Yellow | Yellow | Yellow         |
| Union membership                      | Red     | Red            | Yellow  | Red    | Red     | Red    | Red     | Red    | Red     | Red     | Red    | Red    | Red         | Red    | Red    | Red          | Red    | Red    | Red            |
| Political views                       | Red     | Red            | Red     | Red    | Red     | Red    | Red     | Red    | Red     | Red     | Red    | Red    | Red         | Red    | Red    | Red          | Red    | Red    | Red            |
| Drug and alcohol testing              | Yellow  | Yellow         | Yellow  | Green  | Yellow  | Yellow | Red     | Yellow | Yellow  | Yellow  | Red    | Red    | Red         | Red    | Yellow | Yellow       | Red    | Yellow | Yellow         |

-  Background check is prohibited and/or permitted only in extremely limited circumstances
-  Background check is unusual and/or permitted only in limited circumstances
-  Background check is standard practice





# Hungary



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## OVERVIEW

### 1. Is it standard practice for employers to carry out background checks on applicants?

Yes, employers in Hungary regularly carry out background checks on applicants. However, limitations do apply to the scope of background checks. Many checks are subject to the consent of the applicant and/or other conditions. Employers therefore often need to assess whether background checks are appropriate and proportionate in the circumstances and consider the implications of data protection and discrimination legislation.

### 2. What types of background checks do employers typically carry out on applicants?

The most common background checks in Hungary are education and past employment checks. In relation to foreign nationals, employers will also require confirmation that the applicant has a valid residence and work permit to work in Hungary.



HOME



JURISDICTIONS



DIRECTORY



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BACKGROUND CHECKS  
TRAFFIC LIGHTS



# Hungary

## BACKGROUND CHECKS ON APPLICANTS

- Education and past employment records
- Criminal records
- Credit/financial checks
- Health checks/medical screening
- Social media/internet search
- Fingerprinting
- Handwriting
- Union membership
- Political views
- Drug and alcohol testing

### 3. Which of the above background checks are employers permitted to carry out on applicants?

All of the above background checks are permitted in Hungary, subject to the applicant's consent and other conditions (please see question 6).

### 4. Which of the above background checks are employers not permitted to carry out on applicants?

None of the above checks are expressly prohibited, but please see questions 5 and 6.

### 5. Which of the above background checks are employers permitted to carry out on applicants but only if certain conditions are satisfied (e.g., the applicant's consent needs to be obtained or other restrictions/limitations apply)?

Criminal record checks, credit/financial checks, health checks/medical screening, social media/internet search, fingerprinting, handwriting, union membership, political views and drug and alcohol testing.

### 6. If certain conditions need to be satisfied for any of the background checks, what are these conditions and to which background checks do they apply?

As a general rule, the Labor Code provides that an employer and applicant/employee must notify each other about all facts, data, circumstances and any changes that are essential to establish employment and to exercise their respective employment rights and obligations. The applicant's/employee's privacy rights may be restricted only if this is required for the purpose of employment and it is proportionate to such purpose. The applicant or employee must be informed about the method, conditions and expected duration of such restriction. The applicant or employee may not waive his or her privacy rights. An employer may only request from the applicant or employee data and declarations which do not violate the applicant's or employee's privacy rights and which are essential for the establishment, performance and termination of the employment. Furthermore, an aptitude test may only be taken if it is provided for by legal regulation. Finally, the employer may carry out checks on an applicant or employee only in relation to his or her behavior in connection with his or her employment. The applicant's or employee's private life may not be checked.

Based on the above rules, any background check will be lawful if it does not violate the privacy of the applicant and it is essential to the decision to recruit.



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# Hungary

There are also specific points to note in relation to particular checks:

## *Criminal records*

Criminal checks are not usually required for all applicants and should only be requested where the employer's legitimate interests require such a check to be carried out. The nature of the position or the applicable sector-specific regulations are decisive as to whether requesting criminal records from an applicant is lawful. For example, a criminal record check could be lawful in relation to positions of trust (e.g., an executive employee) or where the law requires the applicant to have a clean criminal record (e.g., an executive of a financial institution).

## *Credit/financial checks*

Credit and financial checks are unusual in Hungary, so any check in this regard may only be possible if there is a justifiable reason for it and this information is required in relation to the decision to hire.

## *Health checks/medical screening*

It is generally unlawful to ask about the health of a job applicant before making a job offer. Health checks are only permitted if there is an occupational requirement to justify one. For some positions, a health check by a doctor is a legal requirement before starting work.

## *Social media/internet searches*

Collecting any information from social media is lawful and permitted only if such information is necessary for the role. Employers should therefore have proper and justifiable cause to collect such information.

## *Fingerprinting*

Taking fingerprints is very uncommon in Hungary. Given employees' privacy rights, the collection of fingerprints could only be lawful if the employer has a legitimate and reasonable interest in obtaining this data (e.g., security systems require fingerprints) and the employee consents. Special consideration must be given to the justification as to why fingerprinting is necessary and whether it is proportionate.

## *Handwriting*

This is an unusual background check, so it is legal and permitted only if there is a legitimate reason to obtain this information and it is connected to the employment.

## *Union membership and political views*

Under the Data Protection Act, this type of data qualifies as sensitive data, and therefore collecting and processing such data requires the written consent of the employee. This information is generally not connected to employment, so asking and processing such data could be unlawful and might result in discrimination.



HOME



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BACKGROUND CHECKS  
TRAFFIC LIGHTS



# Hungary

## *Drug and alcohol testing*

As a general requirement, the employee must be suitable to perform the work and the employer must provide safe work conditions. An employer may therefore lawfully ask an employee to undergo drug and alcohol testing before starting, and during, employment. The employee's consent to such testing is required. If the employee refuses to participate in such testing, the employer may take disciplinary action against the employee.

### **7. Are there limitations on how an employer is permitted to use information arising from the above background checks when making a decision as to whether or not to employ an individual?**

Employers can only use information arising from background checks in connection with the recruitment process/decision to hire. Collecting and using any other data/information not connected to the employment is unlawful. The information should not be used in a discriminatory way.

## **OTHER BACKGROUND CHECKS**

### **8. Are any other background checks permitted and/or standard practice in this jurisdiction?**

No.

### **9. Are there restrictions or limitations on the scope of these checks?**

Not applicable.

## **TIMING OF BACKGROUND CHECKS ON APPLICANTS**

### **10. Would the answers to questions 1 to 9 differ depending on whether the background checks are carried out before or after the decision to make an offer of employment?**

Yes. Drug and alcohol testing cannot be carried out before a job offer has been made (unless the individual voluntarily consents to it). However, employers can lawfully require new employees, and existing employees, to undergo drug and alcohol testing (both before employment commences and during employment).

Applicants should only be required to undergo health checks and medical screening after a job offer has been made and health checks are only permitted if there is an occupational requirement to justify one.



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BACKGROUND CHECKS  
TRAFFIC LIGHTS



# Hungary

## BACKGROUND CHECKS DURING EMPLOYMENT

### 11. Does the law on background checks differ if an employer wishes to carry out such checks on existing employees (as opposed to applicants only)?

Checks may be carried out during employment, but will need to be appropriate, necessary, proportionate and justified by reference to the employee's role. By way of example, alcohol tests during employment could be lawful to ensure that the employee is in a suitable condition to work. However, checking the political views of an employee is likely to be unlawful.

## ENTITLEMENT TO WORK

### 12. What steps do employers have to take to check that an applicant or employee is legally entitled to work in this jurisdiction?

Employees must certify their identity and their education by providing the originals of their identity cards and education certificates/diplomas. The employer must make copies of these documents and retain them during the employment period and for the period of time required by the applicable social security regulations following termination of employment. If the employee is a foreign citizen, he or she must certify with original documents that he or she has a valid work and residence permit to work in Hungary.

## FULL-TIME, PART-TIME, CONTINGENT WORKERS

### 13. Are there any differences in the background checks that can be carried out on full-time, part-time or contingent workers?

No.

## SECTORS

### 14. Do background checks differ in different sectors?

Background checks can be different in various sectors. For example, in the financial sector, more stringent background checks are permitted in relation to executives (for example, criminal record checks, details of previous work and past experience).

## OUTSOURCING BACKGROUND CHECKS

### 15. Are employers permitted to outsource background checks to a third party vendor?

Yes.



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TRAFFIC LIGHTS



# Hungary

## 16. If background checks are outsourced to a third party vendor, does this have any impact on the checks that can be carried out or the relevant data protection obligations?

Where an employer proposes to use a third party data processor to carry out background checks on its behalf, the employer has to notify employees prior to the data transfer by indicating the name of the third party data processor, and the purpose and duration of the data transfer.

If the third party data processor is located in another country (out of the European Economic Area) the data may be transferred to the data processor only if the employee expressly consents to it, or the general requirements of the data processing are met (i.e., there is a legitimate interest for the data processing), and the adequate level of data protection is fulfilled by the data processor. The Safe Harbor certificate of the third party data processor or entering into EU Model Clauses with the relevant entity could provide an adequate level of protection (although please note that the effectiveness of Safe Harbour is now doubtful following a recent ECJ decision).

## DATA PROCESSING

## 17. Are there restrictions or limitations on how employers process the information collected from background checks?

An employer should:

- (a) only process personal information for the purposes collected and as necessary for the establishment of the employment;
- (b) disclose to employees whether the data provision is voluntary or based on legal regulation;
- (c) not retain the personal information for longer than is necessary for the purposes consented to;
- (d) ensure that employees receive appropriate information about the details of the data processing, as well as their rights to get information about the data processing;
- (e) notify employees if the data is being transferred to a third party;
- (f) take appropriate technical and organizational steps to protect the personal data from unauthorized disclosure, damage or destruction;
- (g) produce a code of conduct for all staff processing individuals' personal information; and
- (h) undertake periodic audit reviews to check compliance with data protection measures.



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TRAFFIC LIGHTS



# Hungary

## SANCTIONS/ENFORCEMENT

### 18. What restrictions or laws exist to regulate background checks?

- General employment considerations: Act I of 2012 on the Labor Code
- Data protection considerations: Act CXII of 2011 on the Information Self Determination Right and Freedom of Information
- Financial sector: Act CCXXXVII of 2013 on Credit Institutions and Financial Enterprises
- Non-discrimination: Act CXXV of 2013 on Equal Treatment

### 19. What are the potential sanctions against employers if background checks are carried out unlawfully and what is the mechanism for enforcement?

If data protection rules are breached, the data protection commissioner may impose a fine on the employer, subject to a maximum of HUF10 million (around EUR33,000), or, in the case of a breach of the non-discrimination rules, the equal treatment authority may impose a fine of up to HUF6 million (around EUR20,000).

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